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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

NATIONAL TPS ALLIANCE, MARIELA  
GONZÁLEZ, FREDDY JOSE ARAPE RIVAS,  
M.H., CECILIA DANIELA GONZÁLEZ  
HERRERA, ALBA CECILIA PURICA  
HERNÁNDEZ, E.R., HENDRINA VIVAS  
CASTILLO, A.C.A., SHERIKA BLANC, VILES  
DORSAINVIL, and G.S.,

Plaintiffs,

vs.

KRISTI NOEM, in her official capacity as  
Secretary of Homeland Security, UNITED  
STATES DEPARTMENT OF HOMELAND  
SECURITY, and UNITED STATES OF  
AMERICA,

Defendants.

Case No. 3:25-cv-01766-EMC

Hon. Sallie Kim

**JOINT DISCOVERY LETTER BRIEF**

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1 The Parties submit this brief regarding a privilege dispute relevant to Plaintiffs' Motion for  
 2 Summary Judgment Opposition and Reply due July 18, 2025 at 9:00 am. Counsel met and conferred  
 3 and complied with Section 9 of the District's Guidelines for Professional Conduct.

#### 4 **I. FACTUAL BACKGROUND & RELEVANT DEADLINES**

5 Pursuant to the stipulated clawback agreement between the parties and entered by the Court,  
 6 Dkt. 126, Plaintiffs seek this Court's review of one document—Bates NTPSA2\_003990-  
 7 NTPSA\_03992—originally produced by Defendants in full and subsequently clawed back and re-  
 8 produced with redactions. Although the clawback agreement provides for Plaintiffs to make a sealed  
 9 motion, the Parties have agreed that this joint letter brief need not be filed under seal and that  
 10 Defendants will email this Court both the redacted and non-redacted versions of the document at issue  
 11 for *in camera* review.

12 Defendants first notified Plaintiffs that they may seek to clawback this document on July 14,  
 13 2025. On July 15, 2025 Defendants formally requested the clawback simultaneously providing a  
 14 redacted version of the document along with a privilege log describing this other clawed-back  
 15 documents.

16 While Plaintiffs continue to review other documents Defendants have clawed back, and reserve  
 17 their rights to challenge them, Plaintiffs limit this request is limited to the single document Plaintiffs  
 18 seek to use in their Motion for Summary Judgment Opposition and Reply, due July 18, 2025 at 9:00  
 19 am.

#### 20 **II. PLAINTIFFS' POSITION**

21 As the party asserting privilege, Defendants have the “burden of establishing the existence of  
 22 an attorney-client relationship and the privileged nature of the communication.” *United States v.*  
 23 *Ruehle*, 583 F.3d 600, 607 (9th Cir. 2009). “The attorney-client privilege extends only to  
 24 communications made for the purpose of facilitating the rendition of professional legal services.” *In*  
 25 *re Grand Jury*, 23 F.4th 1088, 1092 (9th Cir. 2021) (citation and internal quotation marks omitted).  
 26 “The privilege protects only communications, not facts” *In re MacBook Keyboard Litig.*, No. 18-CV-  
 27 02813-EJD(VKD), 2020 WL 1265629, at \*3 (N.D. Cal. Mar. 17, 2020).

1 The work product doctrine operates only as to “documents and tangible things that are prepared  
2 in anticipation of litigation.” Fed. R. Civ. P. 26; *United States v. Sanmina Corp.*, 968 F.3d 1107, 1119  
3 (9th Cir. 2020).

4 Defendants’ privilege log does not support a claim for either the attorney-client privilege or  
5 the work product doctrine. Defendants’ log describes the document as an “Email communication  
6 among DHS counsel. Topline email notes the publication of the TPS VZ vacatur notice, as well as  
7 OGC and RLD involvement in the compilation of a termination package, including the status and  
8 general guidance to USCIS on what should be included. Bottom line email discusses ongoing work  
9 and reviews being conducted by the legal divisions on other matters unrelated to TPS.” This  
10 description does not provide “[t]he specific basis for the claim that the document is privileged or  
11 protected.” *Standing Order for Magistrate Judge Sallie Kim* at 7 (effective November 15, 2024). The  
12 description does not identify anticipated litigation to support a work product claim, nor would such a  
13 claim make sense in the context of this email, which was sent well in advance of any litigation related  
14 to the Secretary’s decisions. *See, e.g. Visa U.S.A., Inc. v. First Data Corp.*, No. C-02-1786JSW(EMC),  
15 2004 WL 1878209, at \*9 (N.D. Cal. Aug. 23, 2004). There is, therefore, no basis for Defendants’ work  
16 product claim.

17 Nor does the privilege log description describe any communication made for the purpose of  
18 facilitating the rendering of professional services. Simply because a communication comes from and  
19 involves attorneys is not a basis to assert privilege. *See* Dkt. 222 at 3 (ordering Defendants to produce  
20 “discussions involving attorneys about the logistics of editing documents, not legal advice.”); *see also*  
21 *Epic Games, Inc. v. Apple Inc.*, No. 4:20-CV-05640-YGR, 2025 WL 1260190, at \*40 (N.D. Cal. Apr.  
22 30, 2025). And an update on “status” is similarly logistical. Finally, the fact that portions of the  
23 document relate to non-TPS material has no relevance to whether the underlying “communications  
24 made for the purpose of facilitating the rendition of professional legal services.” *In re Grand Jury*, 23  
25 F.4th at 1092.

26 The non-redacted portion of the document confirms that the redacted material is not attorney-  
27 client privileged or subject to the work product doctrine. The email is a set of “updates” for a “Roll-  
28 Up.” The subject line of the email indicates that the email merely relates to “EO Tracking &

1 Coordination.” The second bullet in the latest in time email begins by indicating that the “baton” is  
2 with USCIS. While the email originates from an attorney, it appears to convey only logistical and  
3 factual information, rather than any communication for the rendering of professional service.  
4 Logistical and fact-based communications are not subject to the attorney-client privilege. *See supra*.  
5 Nowhere does the document indicate that the communication was made in anticipation of litigation.

6 Plaintiffs seek to use this document in their Motion for Summary Judgment Opposition and  
7 Reply, which is due July 18, 2025 at 9:00 am. In light of the pressing deadline, Plaintiffs request that  
8 this Court issue an order at the Court’s earliest convenience and either decide this issue on the papers  
9 and pursuant to the Court’s *in camera* review or hold a hearing no later than July 17, 2025.

### 10 **III. DEFENDANTS’ POSITION**

11 Defendants respectfully request that the Court order the destruction of document  
12 NTPSA2\_3990 that was produced inadvertently because this document is protected by the attorney-  
13 client privilege. Pursuant to the Parties’ Stipulated Clawback Agreement, ECF No. 126, Federal Rule  
14 of Civil Procedure 26(b)(5)(B), and Federal Rule of Evidence 502(b), Defendants request that the  
15 Court order this document destroyed in full.

16 Under the Stipulated Clawback Agreement, when a producing party notifies the receiving party  
17 that information was produced in error and is privileged, the receiving party must promptly sequester  
18 and cease using the specified material until any dispute regarding the producing party’s privilege  
19 notice is resolved. Here, Defendants inadvertently disclosed a document that is protected by the  
20 attorney-client privilege. The document at issue contains privileged communications between counsel  
21 and agency personnel. The Stipulated Clawback Agreement protects against waiver under these exact  
22 circumstances. ECF No. 126. Disclosure does not waive the attorney-client privilege where, as here,  
23 the producing party took reasonable steps to prevent inadvertent disclosure and acted quickly to rectify  
24 the errors. *Id.*

25 Plaintiffs suggest that the document could simply be partially redacted. Defendants agree that  
26 the document can be partially redacted and reproduced. However, the parties disagree as to which  
27 parts of the document should be redacted. The disputed portion of the document at issue reveals  
28 communication between legal counsel and agency personnel constituting formal legal advice that

reflects counsel’s analysis and recommendation regarding the legal requirements of a future TPS termination notice. This confidential legal communication falls squarely within the protection of the attorney-client privilege. See ECF No. 222; *see also In re Grand Jury*, 23 F.4th 1088, 1092 (9th Cir. 2021) (communications involving policy and legal advice fall under the attorney-client privilege); *Greer v. Cnty. of San Diego*, 127 F.4th 1216, 1224 (9th Cir. 2025) (where the primary purpose of the communication is to give legal advice, the attorney-client privilege applies). Plaintiffs’ proposed partial redaction does not cure the harm or address the privilege concerns remaining in the unredacted portions of the document—and Plaintiffs are not entitled to benefit from privileged material simply because it was mistakenly produced. ECF No. 126.

Accordingly, Defendants request that the Court direct Plaintiffs to destroy the document NTPSA2\_3990 mistakenly produced without redactions, confirm that it may not be used for any purpose, and confirm that the privileged portion of the document at issue remain redacted.<sup>1</sup>

Date: July 16, 2025

Respectfully submitted,  
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<sup>1</sup> Defendants have already re-produced a properly redacted version of NTPSA2\_3990.

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Date July 16, 2025

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**CERTIFICATE OF SERVICE**

I hereby certify that on July 16, 2025, I caused the foregoing to be electronically filed with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to all counsel of record.

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/s/ Jessica Karp Bansal

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